Supreme Court, U.S.
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No. 93-1666

In The

Supreme Court of the United States

October Term, 1993

EDWARD H. STEVENS, III,

Petitioner,

v.

THE BOARD OF LAW EXAMINERS OF THE STATE OF TEXAS,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Texas

BRIEF IN OPPOSITION

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32 pp

QUESTIONS PRESENTED

Does this Court have jurisdiction to hear a petition for writ of certiorari seeking review of a state court judgment when the petitioner failed to timely and properly raise a federal question in the state courts, and the state court did not render a judgment or decree that addresses the validity of the state statute on federal constitutional grounds?

Does evidence that an applicant failed to file federal income tax returns for the fourteen years immediately preceding his application for a license to practice law support a State's denial of that application on the ground that the applicant failed to meet the "good moral character" qualification standard?

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EDWARD H. STEVENS, III,

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v.

THE BOARD OF LAW EXAMINERS OF THE STATE OF TEXAS,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Texas

BRIEF IN OPPOSITION

Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari to review the judgment and order of the Supreme Court of Texas entered in *Bd. of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994).

OPINIONS BELOW

Respondent relies upon Petitioner's recitation of the opinions below except to the extent that it alleges that "[t]he opinion and judgment of the lower court, which was reversed by the Texas Supreme Court, appears in

Appendix C." Petitioner's *Appendix C* is a copy of an unpublished opinion that was issued by the intermediate appellate court but was later withdrawn when the Court issued a new opinion. The intermediate appellate court's substitute opinion, which was the one appealed to the Texas Supreme Court, is *Bd. of Law Examiners v. Stevens*, 850 S.W.2d 558 (Tex. App. – Austin 1992) *rev'd* 868 S.W.2d 773 (Tex. 1994).

JURISDICTION

This Court lacks jurisdiction under 28 U.S.C.A. § 1257 (West 1993). As discussed in more detail below in the "Reasons to Deny the Petition," Respondent contends that no jurisdiction exists because the Texas Supreme Court did not render a judgment or decree in which the validity of a state statute was drawn in question on the ground of its being repugnant to the Constitution of the United States.

STATEMENT OF THE CASE

While the statement of the case presented in the petition is basically accurate, Respondent believes it does not focus on the relevant facts or the issue of whether a federal question was properly raised below. Accordingly, Respondent offers this brief supplement to the statement of the case found in the petition.

This case arises from a decision of the Board of Law Examiners for the State of Texas (the "Board") to deny

Stevens's application to be licensed as an attorney. The most salient fact supporting the Board's decision is that Stevens failed to file federal income tax returns over a fourteen year period and, with the exception of a time when taxes were withheld by his employer, failed to timely pay his taxes during that period. Stevens also had two unsatisfied civil judgments that had been entered against him. The Board concluded that Stevens lacked good moral character because he had negative character traits and that there was a clear and rational likelihood that a person with those traits would injure a client, obstruct the administration of justice, or fail to discharge his professional responsibilities if licensed to practice law.

Stevens appealed the Board's decision to state district court contending that the Board's conclusion that he "would probably injure a client or obstruct the administration of justice" was not supported by substantial evidence. No federal constitutional issues were raised. The state district court held that the Board's order was not supported by substantial evidence and remanded the case back to the Board for further proceedings.

A Texas intermediate appellate court affirmed the decision of the state district court by holding that, among other things, Stevens's past misconduct would not violate the Texas Disciplinary Rules of Professional Conduct, and thus that the Board's order was not supported by substantial evidence.

The Board appealed to the Texas Supreme Court contending that the court of appeals had misinterpreted the Rules Governing Admission to the Bar of Texas and the Texas Disciplinary Rules of Professional Conduct. Seven

days before oral argument in the Texas Supreme Court, Stevens filed a supplemental response brief in the Texas Supreme Court. This brief marked the first attempt by Stevens to present a federal constitutional issue in the case. The Texas Supreme Court, however, decided the case on the independent state law grounds properly preserved for its review and did not address any federal constitutional issue.

Stevens now contends that the Rules Governing Admission to the Bar of Texas violate the Fourteenth Amendment to the United States Constitution. Alternatively, he contends that the Rules Governing Admission to the Bar of Texas are unconstitutional as applied to him because the Texas Supreme Court misinterpreted the Texas Disciplinary Rules of Professional Conduct.

REASONS TO DENY THE PETITION

I.

The Court is Without Jurisdiction to Entertain the Petition For Writ of Certiorari As the Petitioner did not Timely and Properly Raise a Federal Question in the Courts Below and the Texas Supreme Court did not Render a Judgment or Decree in Which the Validity of the Texas Rules Governing Admission to the Bar was Drawn in Question on the Ground of Being Repugnant to the Constitution of the United States.

This Court lacks jurisdiction under 28 U.S.C.A. § 1257 (West 1993) because the Texas Supreme Court did not render a judgment or decree in which the validity of a state statute was drawn in question on the ground of its being repugnant to the Constitution of the United States.

Further, this case does not satisfy the general considerations governing review on a writ of certiorari outlined in Rule 10.1 of the Supreme Court Rules.

A. Stevens has not shown and cannot show a timely, properly raised federal question.

Stevens fails to show, in accordance with Rule 14.1(h) of the Supreme Court Rules, "that [a] federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari." Stevens is required to (1) specify the stage in the proceedings, both in the court of first impression and in the appellate courts, at which the federal question was raised; (2) the manner in which it was raised; (3) the way in which it was passed on by the lower courts; and (4) pertinent quotation of specific portions of the record where the matter appears. S.Ct. R. 14.1(h).

Before this Court can find that a state has violated the Constitution, it must be clear from the record that the state court has in fact passed on a federal question. *See e.g. Konigsberg v. State Bar of California*, 353 U.S. 252, 275 (1957). The facts underlying this appeal by Stevens, however, establish that his constitutional issues have not been properly preserved for review by this Court.

In his petition to this Court, Stevens contends that the Texas law of attorney licensure contravenes the due process requirements of the U.S. Constitution because:

> The Texas law of attorney licensure lacks meaningful standards for the assignation of "character traits" and permits the Board to infer, without more, a connection between a negative

> character trait and the likelihood of professional conduct.

Petition, at p. 16. Stevens complains of the discretion given the Board to (1) identify a character trait of the applicant and (2) determine whether there is a rational relationship between the character trait and the likelihood that the applicant will, if licensed, injure a client or violate Texas Disciplinary Rules. He argues that the Texas procedure "exceeds the State's interest to the detriment of an applicant's rights." Petition, at p. 18.

It is evident from the Board's letter ruling, in which the Board notified Stevens of its decision to recommend denial of his application, that the Board followed the procedure outlined by Texas Gov't Code Ann. § 82.028(c) (Vernon 1988) and the Texas Supreme Court's Rules Governing Admission to the Bar of Texas. *See* Petition Appendix D, p. A48. Stevens, however, did not raise his constitutional concerns about the Board's procedure in his original petition to district court when he appealed the Board's judgment. A copy of Stevens's Original Petition is attached as Appendix "A" to this Brief in Opposition.

The district court was required to "determine from the certified record on file whether or not the Board's decision is reasonably supported by substantial evidence." *See* Rule XV(i)(5) of the Rules Governing Admission to the Bar of Texas (West 1993). The certified record on file, however, does not contain any argument by Stevens or his counsel that the Board's licensure procedure is unconstitutional, that the Board violated his constitutional rights, or that the Board's licensing procedure adversely affects the issue of whether there is

substantial evidence to support the Board's order.[1] The district court simply held that the Board's order was not reasonably supported by substantial evidence and remanded the case back to the Board. A copy of the district court's order is attached as Appendix "B" to this Brief in Opposition. Texas law provides that an appeal from any final judgment of the court may be taken by either party in the manner provided for in civil actions generally. *See* Rule XV(i)(6) of the Rules Governing Admission to the Bar of Texas (West 1993). Accordingly, the Board appealed the district court's ruling to the court of appeals and to the Texas Supreme Court in the manner provided for in civil actions generally.

Stevens's only argument regarding the preservation of his constitutional challenge for review by this Court is that he filed a supplemental brief in the Texas Supreme Court pursuant to Tex. R. App. P. 136(d)[2] allegedly

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[1] Even in his petition to this Court Stevens does not contend that the Board's use of the allegedly unconstitutional licensing procedure adversely affected the Texas Supreme Court's determination of whether there was substantial evidence to support the Board's order. In fact, the repeated pattern of conduct – i.e, his failure to file federal income tax returns for fourteen consecutive years – is sufficiently egregious to justify the Board's decision to deny Stevens's application even if the procedure argued by Stevens were employed. Thus, a decision by this Court on Stevens's constitutional challenge would be an advisory opinion which this Court is not permitted to render. *See, e.g., Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566 (1977).

[2] Rule 136(d) of the Texas Rules of Appellate Procedure provides as follows:

Rule 136. BRIEFS OF RESPONDENTS AND OTHERS

* * *

raising the issue. Petition, at p. 15. Because the Board's application for writ of error does not raise a constitutional issue and Stevens never filed a cross-point to the court of appeals, Stevens's only argument under Tex. R. App. P. 136(d) is that his constitutional challenge provides an independent ground for affirmance of the district court's holding that the Board's order was not supported by substantial evidence.

Stevens's argument fails, however, because a constitutional challenge in Texas is waived if it is presented for the first time at the Texas Supreme Court. *See Johnson v. Lynaugh*, 796 S.W.2d 705, 707 (Tex. 1990) ("In this court he contends for the first time that section 13.001 violates article I, section 13 of the Texas Constitution, the 'open court' provision. This contention is not properly before us"). In fact, a party to a lawsuit waives the right to raise constitutional issues on appeal if that claim is not presented to the trial court. *City of San Antonio v. Schautteet*, 706 S.W.2d 103 (Tex. 1986); *Cannon v. Lemon*, 843 S.W.2d 178 (Tex. App. – Houston [14th Dist.] 1992, writ denied) (federal constitutional claim waived by failure to raise in trial court). A state procedural rule that forbids the raising of federal questions at late stages in the case, or by any other than a prescribed method, has been recognized as a valid exercise of state power. *Williams v. Georgia*, 349 U.S. 375, 382-83 (1955). Further, briefs and oral arguments before State courts are not part of any record filed

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(d) Reply and Cross Points. Respondent shall confine his brief to reply points that answer the points in the application for writ of error or that provide independent grounds for affirmance and to such cross-points that respondent has preserved and that establish respondent's rights.

with the Supreme Court and cannot be used to establish that a federal question was raised. *Live Oak Water Users' Ass'n v. Railroad Comm'n*, 269 U.S. 354, 357-58 (1926); *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 54 (1934).

Stevens's failure to timely and properly raise his federal question denies this Court jurisdiction to review the Texas Supreme Court's judgment on a writ of certiorari. Thus, the petition should be denied.

B. Stevens has not and cannot show that a federal question was adjudicated below as the Texas Supreme Court's decision was based solely on state law.

Stevens's federal question was not "passed on" by the Texas Supreme Court. Stevens contends that the Texas Supreme Court addressed the due process concerns raised by the Board's order, citing *Schware v. Bd. of Bar Examiners of New Mexico*, 353 U.S. 232 (1957), and *Konigsberg*. Petition, at p. 15. However, whether a state court actually considered a federal question is not necessarily demonstrated by the mere citation of Supreme Court decisions in the opinion. *Osborne v. Clark*, 204 U.S. 565, 567-68 (1907). The Texas Supreme Court's opinion, if it is to be helpful in this connection, must explicitly or impliedly recognize the presence of a federal question and render a decision on it.

A review of the Texas Supreme Court's opinion reveals that the court did not, either explicitly or implicitly, render a decision on a federal question regarding the constitutionality of Texas' rules regarding attorney licensure. *See Stevens*, 868 S.W.2d at 774. The issue was purely

a state law question regarding the minimum standards for moral character and fitness contained in the Texas Disciplinary Rules of Professional Conduct, and the process by which courts should review Board decisions regarding licensure of attorneys pursuant to the Rules Governing Admission to the Bar of Texas. *Id.* In particular, the Texas Supreme Court held that:

(1) the court of appeals "mischaracterize[d] the legal standard by which Stevens's conduct must be judged" (868 S.W.2d at 778);

(2) the Texas standard requires the Board to find "a clear and rational connection between *a character trait of the applicant* and the likelihood that the candidate would injure a client or [violate the Texas Disciplinary Rules]" (*Id.*);

(3) the " 'substantial evidence' standard of review applies both to the Board's identification of the applicant's character traits and to its finding that the applicant's character traits are likely to cause future injuries to clients or violations of the Texas Disciplinary Rules" (*Id.*);

(4) the "substantial evidence" review of the "clear and rational connection" issue presents a mixed question of fact and law which requires a case-by-case examination of the facts; (868 S.W.2d at 781);

(5) the evidence that Stevens repeatedly disregarded his legal duties by not filing federal income tax returns for fourteen years was substantial evidence to support the Board's conclusion that Stevens demonstrated a

marked disrespect for the law and that he lacked financial responsibility (*Id.*);

(6) a "willful failure to file a tax return constitutes attorney misconduct subject to discipline" pursuant to Rule 8.04(a)(2) of the Texas Disciplinary Rules of Profcssional Conduct (868 S.W.2d at 780);

(7) "the Board could reasonably conclude that Stevens, with knowledge of his obligations, willfully chose to delay filing his returns" (*Id.*);

(8) Stevens's "fourteen year failure to file income tax returns constitutes dishonest conduct that would violate" Rule 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct (*Id.*), and that;

(9) since "an attorney must act as a counselor and advisor . . . and is frequently entrusted with responsibility for client's assets and affairs . . . there is a clear and rational connection between [Stevens's] disrespect for the law and financial irresponsibility on the one hand, and the likelihood that [he] would injure a client [or violate Texas' Disciplinary Rules] on the other (868 S.W.2d at 781).

The Texas Supreme Court's opinion does not once mention "due process" or the constitutionality of the Rules Governing Admission to the Bar of Texas. The federal question that Stevens puts to this Court simply cannot be extracted from the opinion below.

This petition for writ of certiorari should be denied as Stevens cannot show that he timely and properly

raised a federal question that was passed on by the court of first impression and the state appellate courts so as to give this Court jurisdiction to review the Texas Supreme Court's judgment.[3]

II.

Texas' Denial of a License to Practice Law Based on the Constitutionally Permissible "Good Moral Character" Qualification Standard is Supported by Sufficient Evidence When the Applicant Failed to File Federal Income Tax Returns During the Fourteen Years Immediately Preceding his Application for Admission to the Texas Bar.

Assuming, without conceding, that this Court has jurisdiction over the petition, the petition for writ of certiorari should be denied as it does not raise an important question of federal law. Instead, the Texas statute and the procedures used by the Board are entirely consistent with the constitutional standards for bar admission previously established by this Court.

A. Texas' "good moral character" qualification standard for licensure as an attorney is a constitutionally permissible standard.

"It is undisputed that a State has a constitutionally permissible and substantial interest in determining whether an applicant possesses the character and general

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[3] Even if Stevens could establish that a federal question was properly raised and passed on by the state courts, he has not done so in accordance with Rule 14.5 of the Supreme Court's Rules.

fitness requisite for an attorney and counselor-at-law." *In re Griffiths*, 413 U.S. 717, 722-23 (1973). A State can require high standards of qualification, such as good moral character[4] or proficiency in its law, before it admits an applicant to the bar. *Schware*, 353 U.S. at 239. Any qualification, however, must have a rational connection with the applicant's fitness or capacity to practice law. *Id.*

Stevens does not challenge Texas' requirement that he possess good moral character as a prerequisite to being licensed as an attorney. Instead, he challenges the manner in which the Board makes its determination about an applicant's good moral character. Stevens contends that there is a constitutional requirement that the Board find a direct link between his *conduct* (*i.e.*, his failure to file tax returns for fourteen years) and his fitness or capacity to practice law. *See e.g.*, Application at 19. Texas law, however, requires the Board to find "a clear and rational connection between a *character trait* of the applicant and the likelihood that the applicant would injure a client or violate the Texas Disciplinary Rules of Professional Conduct. *Stevens*, 868 S.W.2d at 778; Tex. Gov't Code Ann. § 82.028(c) (Vernon 1988); Rules Governing Admission to the Bar of Texas IV(b) (1993). Essentially, Texas law establishes a two-step process – (1) does the applicant's conduct establish a negative character

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[4] "From a profession charged with [the responsibility of standing as a shield in defense of right and to ward off wrong] there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character.' " *Schware*, 353 U.S. at 247 (Frankfurter, J., concurring).

trait and (2) is there a clear and rational connection between that character trait and the applicant's fitness to practice.

It is difficult to ascertain the source of the constitutional imperative asserted by Stevens. Indeed, the Texas procedure Stevens challenges is merely a more detailed and carefully prescribed means of accomplishing the end he asserts is required – *i.e.*, insuring that there is a rational connection between the applicant's conduct and his fitness to practice. Under the Texas procedure, each step in the process is required to have a basis in evidence and is subject to judicial review.[5] It is unclear what constitutional theory is asserted to require the State to use a one-step rather than a two-step process.

Stevens does assert that the two-step process of identifying a negative character trait and then determining whether there is a connection between that character trait and the applicant's fitness to practice gives the state overly broad discretion. Petition at 21. He contends that the rule is so broad that a person with outstanding library fines, leash law violations, or parking tickets could be found to be disrespectful of the law and thus unfit to practice. *Id.* at 22. The difficulty with Stevens's argument is two-fold. First, as a check against an overly broad exercise of discretion by the Board, the Texas Supreme Court recognized that each step must be supported by

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[5] This "substantial evidence" standard of review applies both to the Board's identification of the applicant's character traits and to its finding that the applicant's character traits are likely to cause future injuries to clients or violations of the Disciplinary Rules. *Stevens*, 868 S.W.2d at 778.

evidence and that each step is subject to judicial review. *Stevens*, 868 S.W.2d at 778. Second, this case does not involve a person with outstanding library fines, leash law violations, or parking tickets. Neither does it involve a youthful indiscretion, an isolated incident, or any other type of situation that would not rise to a level that would reasonably justify rejection of an application. Instead, the facts here reflect a person who, while a licensed attorney in Mississippi, knowingly and repeatedly failed to file federal income tax returns over the fourteen year period immediately preceding his application for licensure in Texas.

The conduct at issue in this case is such that the ultimate outcome of this appeal would not change even if Stevens were to prevail on his constitutional challenge to the Board's procedures. The constitutional imperative enunciated by this Court is simply that any qualification standard imposed by a state must have a rational connection with the applicant's fitness or capacity to practice law, and that a finding that an applicant does not meet the qualification must be supported by record evidence. *Schware*, 353 U.S. at 239. Both Texas law and record evidence in this case satisfy that constitutional requirement.

B. A fourteen year failure to file income tax returns or pay taxes is sufficient evidence to support a State's denial of an application for licensure as an attorney based on the State's "good moral character" qualification standard.

This Court should deny the petition for writ of certiorari unless it concludes that a fourteen year period of

failing to file income tax returns or pay taxes, which ends after an applicant applies for licensure as an attorney in Texas, does not present any evidence upon which the Board could support a finding that the applicant lacks good moral character. *See Schware*, 353 U.S. at 239; *Konigsberg*, 353 U.S. at 273. Such a conclusion by this Court, however, would undermine the American Bar Association's Rules of Professional Conduct (ABA Model Rules), which define the offense of willful failure to file an income tax return as professional misconduct. ABA Model Rule 8.4 cmt. 1.[6] It would also undermine the Texas Disciplinary Rules of Professional Conduct under which Stevens's fourteen year repeated pattern[7] of dishonesty regarding his tax obligation constitutes professional misconduct. 868 S.W.2d at 779-80. The legal profession as a whole would be adversely impacted by such a ruling from this Court.

In both *Schware* and *Konigsberg*, this Court concluded that the applicants' due process rights were violated because there was no evidence to rationally justify a finding that the applicants failed to meet the applicable

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[6] Texas did not adopt the portion of the ABA comment that sets out willful failure to file income tax returns as professional misconduct, but the Texas Supreme Court does not read the omission as disagreement with the ABA formulation of professional misconduct. *Stevens*, 868 S.W.2d at 779-80.

[7] Conduct subject to discipline under Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct includes a pattern of repeated offenses, even ones of minor significance when considered separately, that indicates indifference to legal obligations and calls lawyer's overall fitness to practice into question. Tex. Disciplinary R. Prof. Conduct 8.04 cmt. 5 (1989).

standards for good moral character. *Schware*, 353 U.S. at 239; *Konigsberg*, 353 U.S. at 273. Both cases concerned an applicant who was involved with the Communist Party years before he applied to be licensed to practice law, and whose application was denied for lack of good moral character solely because of his prior political affiliation. In holding that there was no evidence to support the denial of the applications this Court focused on the fact that the applicants had not been involved with the Communist Party for approximately fifteen years prior to the filing of their applications for licensure. *Schware*, 353 U.S. at 246; *Konigsberg*, 353 U.S. at 271. This Court was also concerned about a state's exercising its licensure power in a way that impinged on the applicant's freedom of political expression or association. *Konigsberg*, 353 U.S. at 273. None of those concerns are present under the facts presented by Stevens.

The evidence establishes that Stevens, while a licensed attorney in Mississippi, failed to file federal income tax returns for the tax years 1972 to 1986 because he was afraid to file late tax returns after falling behind a couple of years. In 1986 when he applied to the Board for licensure in Texas, he had hired an accountant to assist him with preparing his returns but had not filed the returns or paid the related taxes. Stevens's repeated pattern of offenses was not some youthful indiscretion that occurred years prior to the filing of his application with the Board as was the case in *Schware* and *Konigsberg*. Also, the Board's reliance on that evidence does not impinge on any of Stevens's constitutionally protected rights such as the freedom of political expression or association. The Board could rationally justify its finding that Stevens

failed to meet the applicable standards for good moral character based on the evidence of Stevens's fourteen year failure to file federal income tax returns. Therefore, there is no basis upon which this Court could conclude that Stevens's due process rights were violated.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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CAUSE NO. 441,226

EDWARD H. STEVENS, III	§	IN THE DISTRICT
	§	COURT OF
v.	§	TRAVIS COUNTY,
BOARD OF LAW EXAMINERS OF THE STATE OF TEXAS	§	TEXAS
	§	
	§	250 JUDICIAL
	§	DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES EDWARD H. STEVENS, III, complaining of the Board of Law Examiners of the State of Texas ("BLE"), Defendant, and for cause of action shows as follows:

I. PARTIES

1. Plaintiff is a resident of Picayune, Pearl River County, Mississippi, an attorney licensed to practice law in the State of Mississippi, and in good standing with the Mississippi Bar.

2. Defendant BLE is a judicial agency duly created under the laws and constitution of the State of Texas and charged with the duties of determining the eligibility and qualifications of candidates and applicants for licenses to practice law in the State of Texas, based on standards and regulations adopted by the Supreme Court. BLE may be served with process herein by serving its executive director, Wayne E. Denton, at the offices of BLE, 510 South Congress Avenue, Suite 116, Austin, Travis County, Texas 78704.

II. JURISDICTION

3. This Court has jurisdiction pursuant to Tex. Govt. Code §82.022(b) and Rule XI(k) of the Rules Governing Admission to the Bar of Texas promulgated thereunder.

III. STATEMENT OF FACTS

4. In this suit, Plaintiff seeks to appeal the BLE's decision to deny Plaintiff's application for admission to the Bar of Texas. Relevant facts are set forth below.

5. From 1960 through 1964, Plaintiff was a member of the House of Representatives of the State of Mississippi. In 1969, Plaintiff was admitted to the Bar of Mississippi. From September 1969 through November 1973 Plaintiff was engaged in the private practice of law in Mississippi; from November 1973 through January 1978 Plaintiff was employed as an attorney with the Corps of Engineers; and from January 1978 through the present Plaintiff has been engaged in the private practice of law in Mississippi.

6. In or around August 1985, Plaintiff applied for admission to the Bar of Texas. In his application and supplementation thereto, Plaintiff disclosed the existence of three unsatisfied judgments pending against him. During its investigation, BLE discovered information which led it to believe that Plaintiff was not current in his obligations to the Internal Revenue Service ("IRS"). In or around October 1987 and again in January 1988 Plaintiff supplemented his application for admission to the Bar of Texas.

7. BLE advised Plaintiff that it was unable to determine from the information available to it in Plaintiff's supplemental application that Plaintiff possessed the good moral character and fitness required for admission to the Bar of Texas.

8. On February 22, 1988, BLE conducted a hearing on Plaintiff's supplemental application. At the hearing, Plaintiff proffered testimony and evidence that he had met his obligations with the IRS. At that time, the judgments against him remained outstanding. Plaintiff has never availed himself of protection under the Federal bankruptcy laws.

9. On February 23, 1988, BLE notified Plaintiff's counsel that it had voted to deny Plaintiff's application for admission. On February 24, 1988, and again on March 22, 1988, Plaintiff made written request to BLE pursuant to Rule XI(i), Rules Governing Admission to the Bar of Texas, for the evidence on which it relied in its decision and reasons for denying Plaintiff's application. As of the filing of this petition, BLE has not responded to Plaintiff's requests.

10. Plaintiff believes that BLE's decision was based on its perception, as stated by its counsel, that Plaintiff's case is about "a continuing pattern of financial irresponsibility" (transcript, p. 59). Evidence presented to BLE substantiates that Plaintiff is competent to practice law and that he possesses good moral character and fitness (Applicant exhibits 1 through 6, 11, 12). The sole issue upon which BLE focused its investigation and based its subsequent denial of Plaintiff's application was Plaintiff's

ability, or a lack thereof, to fulfill his financial obligations on a timely basis.

IV. FIRST CAUSE OF ACTION: JUDICIAL REVIEW

11. This action is brought under Tex. Govt. Code §82.022(b) and Rule XI(k) of the Rules Governing Admission to the Bar of Texas promulgated thereunder, and is a request for judicial review of BLE's decision to deny Plaintiff's application for admission to the Bar of Texas. Plaintiff believes that the BLE's decision was not reasonably supported by substantial evidence and is erroneous as a matter of law.

12. Denial of Plaintiff's application for admission based on the existence of unpaid judgments and late filings of tax returns is not authorized by statute:

> *The board may not recommend denial of a license* and the supreme court may not deny a license to an applicant because of a deficiency in the applicant's moral character or fitness *unless*:
>
> (1) *The board finds* a clear and rational connection between a character trait of the applicant and the likelihood *that the applicant would injure a client or obstruct the administration of justice* if the applicant were licensed to practice law; or
>
> (2) The board finds a clear and rational connection between the applicant's present mental or emotional condition and the likelihood that the applicant will not discharge properly the applicant's responsibilities to a client, a court or the legal profession if the applicant is licensed to practice law.

Tex. Govt. Code §82.028(c) (emphasis added).

13. The evidence and testimony presented by the parties at the hearing on February 22, 1988, does not fall within the language of §82.028(c). While BLE may believe the existence of unpaid judgments and untimely-filed tax returns evidences a "pattern of financial irresponsibility," there is no evidence, and no substantial evidence, that Plaintiff would "injure a client or obstruct the administration of justice" if he were licensed to practice law.

14. Plaintiff reserves the right to amend this petition based on discovery, receipt of the letter requested under Rule XI(i), Rules Governing Admission to the Bar of Texas, or any other matter.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Edward H. Stevens, III prays that this Court remand the matter of Plaintiff's application for admission to the Bar of Texas to Defendant Board of Law Examiners for further proceedings, for an order requiring that Plaintiff's application be granted and Plaintiff be admitted to the Bar of Texas, and for such other and further relief as is deemed fair and just.

Respectfully submitted,

ALVIS, CARSSOW &
von KREISLER,
A Professional Corporation

By /s/ N V Kreisler
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CAUSE NO. 441,226

EDWARD H. STEVENS, III, Plaintiff, V. BOARD OF LAW EXAMINERS OF THE STATE OF TEXAS, Defendant.	§ § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 250TH JUDICIAL DISTRICT

ORDER

On the 18th day of October, 1991, a hearing was held on this appeal. All parties appeared through their attorneys.

This case is an administrative appeal of a decision by the Board of Law Examiners (the "Board") to deny Edward H. Stevens III a license to practice law in Texas. The Board denied Stevens' application because it found *inter alia* that "he lacks the present good moral character required for admission by the *Rules Governing Admission to the Bar of Texas* and by the Statutes."

After reviewing the administrative record, the parties' briefs, and after listening to the arguments of counsel, the Court finds that the Board's order was not reasonably supported by substantial evidence; it is, therefore,

ORDERED that the Board's decision denying licensure to Stevens is reversed and is set aside in all respects; and, it is further

ORDERED that this case be remanded to the Board for further proceeding consistent with this order.

SIGNED AND ENTERED this 5 day of Nov, 1991.

/s/ Jerry Dellana
JUDGE JERRY DELLANA